

OPINION NO. 78-027**Syllabus:**

The authority to purchase, lease and hold title to motor vehicles to be used to meet the transportation needs of a county board of mental retardation lies with such board and not with the board of county commissioners. (1970 Op. Att'y Gen. No. 70-121 overruled.)

To: William Safranek, Morgan County Pros. Atty., McConnellsville, Ohio
By: William J. Brown, Attorney General, May 4, 1978

I have before me your request for my opinion which can be restated as follows:

Does the power to lease, to purchase and to hold title to motor vehicles to be used to meet the transportation needs of a county board of mental retardation lie with the board of county commissioners or with the county board of mental retardation?

R.C. 5126.01 establishes county boards of mental retardation in each county of Ohio. The powers and duties of such boards are set forth in R.C. 5126.03 which reads, in part, as follows:

The county board of mental retardation, subject to the rules and standards of the chief of the division of mental retardation and developmental disabilities shall:

(A) Administer and supervise facilities, programs, and services established under section 5126.06 of the Revised Code and exercise such powers and duties as prescribed by the chief; . . .

(C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;

(D) Provide such funds as are necessary for the operation of facilities, programs, and services established under section 5126.06 of the Revised Code.

R.C. 5126.06 establishes training centers and workshops for the mentally retarded and provides, in part, as follows:

The chief of the division of mental retardation and developmental disabilities, with the approval of the director of mental health and mental retardation, shall establish in any county or mental health and mental retardation district a training center or workshop, residential center, and other programs and services for the special training of mentally retarded persons, who are determined by the division of mental retardation and developmental disabilities to be capable of profiting by specialized training. . . . The chief is the final authority in determining the nature and degree of mental retardation. He shall decide all questions relative or incident to the establishment and operation of each training center or workshop, residential center, and other program or service; determine what constitutes special training; promulgate subject to sections 119.01 to 119.13 of the Revised Code, all rules governing the approval of mentally retarded persons for

such training; determine or approve all forms used in the operation of programs undertaken under this section; and approve the current operating costs of such programs.

Consequently, the duty and authority to provide facilities, programs and services to the mentally retarded has been reposed in the county boards of mental retardation, subject to the rules and standards developed by the chief of the division of mental retardation and developmental disabilities. While the board of county commissioners serves as the taxing authority for a county board of mental retardation under R.C. 126.03, the commissioners exercise no supervisory power or control over the programs, facilities and general operations of the county board of mental retardation.

One of my predecessors, in 1970 Op. Att'y Gen. No. 70-121 concluded that a county board of mental retardation does not have the authority to acquire school buses for the transportation of mentally retarded pupils. The analysis set forth in that Opinion, however, focused upon a provision of R.C. 307.41, since amended, which authorized a board of county commissioners to purchase vehicles for all county departments unless specifically excepted by statute. The General Assembly subsequently amended R.C. 307.41 (134 Laws of Ohio H. 46, eff. 1971), altering that provision. The current version of R.C. 307.41 provides as follows:

Whenever the board of county commissioners deems it necessary to purchase or lease motor vehicles for its use, or for the use of any department, commission, board, office, or agency under its direct supervision, or for the use of any elected county official or his employees, it shall adopt a resolution setting forth the necessity for such purchase or lease, together with a statement of the kind and number of vehicles required and the estimated cost of purchasing or leasing each. Upon adoption of the resolution the board may purchase or lease such vehicles, subject to sections 307.86 to 307.93 of the Revised Code. (Emphasis added.)

Because a county board of commissioners exercises no control or supervisory power over the county board of mental retardation, the current version of R.C. 307.41 does not require purchase by the commissioners of motor vehicles for the transportation of retarded pupils. For this reason, I am constrained to disagree with my predecessor's conclusion that the purchase of such vehicles is a matter statutorily committed to the board of county commissioners.

R.C. 5126.03(C), supra places an affirmative duty on the boards of mental retardation to furnish transportation that is necessary for those participating in their programs. In 1973 Op. Att'y Gen. No. 73-014, I concluded that these boards have a duty to provide mentally retarded persons with free transportation to and from the facilities operated by such boards within their respective counties. The authority to purchase or lease motor vehicles is so integrally related to the duty to provide transportation that it is a necessarily implied power under R.C. 5126.03(C). It would be incongruous to hold these boards to a duty to provide transportation while withholding the authority to obtain the means of transportation.

Therefore, in specific answer to your question, it is my opinion and you are so advised that the authority to purchase, lease and hold title to motor vehicles to be used to meet the transportation needs of a county board of mental retardation lies with such board and not with the board of county commissioners. (1970 Op. Att'y Gen. No. 70-121 overruled.)